S/2 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Yasin Khan Vs. Guman Singh & ors.

S.B. CIVIL MISC. APPEAL NO.121/1992.

Against the award dated 23.01.1992 made by the Motor Accidents Claims Tribunal, Balotra in Claim Case No.10/1987

Date of Judgment : 02.08.2006.

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Anuj Kala, for the appellant.
Mr. B.S. Bhati, for the respondents.

BY THE COURT:

The claimant has preferred this appeal against the award dated 23.01.1992 made by the Motor Accidents Claims Tribunal, Balotra in Claim Case No.10/1987 whereby the Tribunal has rejected his claim for compensation.

The claimant-appellant submitted the claim application with the averments that on 11.09.1986 he was travelling from Balotra to Jodhpur in a bus belonging to the Rajasthan State Road Transport Corporation ('the Corporation') bearing registration No. RNE 4926 that was

driven by the non-applicant No.1 Guman Singh; and the bus, being driven in a brisk speed negligently, hit against a camel-cart and because of such accident three fingers of his left hand were chopped off and he suffered grievous injuries at his left arm. Detailing out the loss suffered by him for loosing three fingers and for other bony injuries at the left arm, the treatment expenditure and pain and sufferings, the claimant sought compensation in the sum of Rs.4,47,000/-. The claim application was contested by the driver of the bus, non-applicant No.1 with the submissions that the claimant was reading a book while keeping his arm out of the window, and got injured on being hit by an oncoming camel-cart; that he did not sustain any injury on account of rash or negligent driving of the bus and on the contrary the driver and the conductor repeatedly warned him not to hang his arm out of the window but he did not care. The non-applicant Nos.2 and 3 submitted that the passengers were warned not to put any limb out of the running bus and the claimant was specifically warned by the driver and the conductor but he did not care and sustained injuries by keeping his arm out of the window. The quantum of compensation claimed was also put to contention.

The learned Tribunal framed the following issues for determination of the questions involved in the claim case:

"1: आया दिनांक 11/9/86 को राजस्थान रोड़वेज की गाड़ी आर० एन० ई० 4926 ड्राईवर गुमानसिंह गफलत व उपेक्षा (Rash & Negligent) से चला रहा था और कलयाणपुर गांव पहूंचने के पहले ऊंट गांडा जो सही साइड़ पर सड़क के एक तरफ खड़ा था, के बांयी तरफ वाहन की टक्कर मारी जिससे जिससे ऊंट गाड़ा की टक्कर से सायल के बांये हांथ की तीन अगूंलिया घटना स्थल पर ही कट गयी व बांया हांथ भी टूट गया। ....सायल

2: आया सायल रूपये 4,47,000 की राशि बतौर हर्जाना पाने का अधिकारी हैं। .....सायल

3: आया गैरसायल धारा 35 सी पी सी के तहत विशेष हर्जा पाने का अधिकारी हैं। .....गैरसायलान

4: दादरसी"

Apart from producing relevant documentary evidence, the claimant examined Arjun Ram, Head Constable of Police Station Sadar, Barmer, the investigating officer, as AW-1, Yasin Khan claimant himself as AW-2, Shanker Lal, a co-passenger with the claimant, as AW-3 and Dr. Dharmendra Sharma, the Medical Jurist in relation to the medical reports, as AW-4. The non-applicants examined Guman Singh, driver of the bus as DW-1, Ridmal Singh, Manager Accounts of the Corporation as DW-2 and Brij Lal, conductor of the bus as DW-3.

After hearing the parties and examining the record, the learned Judge of the Tribunal observed that had the bus been driven negligently, other passengers too would have sustained injuries and the vehicle would have got

damaged but only the claimant was injured. Learned Judge then referred to the statement of Shanker Lal, AW-3 that there was a book lying with the claimant Yasin Khan and held that the claimant has failed to establish that the accident was caused by rash and negligent driving of the bus and, therefore, decided issue No.1 against the claimant. The learned Judge further observed that the claimant alleged his earnings as 'haath-thela' vendor but has not produced the licence of the Municipality and, therefore, issue No.2 was also decided against the claimant. As a consequence of such findings, the learned Judge proceeded to reject the claim application altogether.

Learned counsel Mr. Anuj Kala appearing for the appellant has strenuously contended that the claimant has established that the bus was driven at a high speed; that the applicant is an illiterate person and he cannot read or write and there arise no question of his reading a book; that there was no contribution of the claimant to the accident or to the injuries and the fact that he kept arm out of the window is not established on record; that there being no rebuttal to the evidence led on behalf of the appellant on his income, reasonable compensation ought to have been awarded particularly when he has suffered permanent disablement upon loosing three fingers of his hand and has also suffered

fracture at the left arm and has suffered the loss of earning capacity.

Learned counsel Mr. B.S. Bhati appearing for the Corporation has strenuously opposed the submissions made on behalf of the appellant-claimant and has pointed out the evidence led by the non-applicants specifically to the effect that the claimant kept his arm out of the window in spite of repeated warnings and submitted that the claimant is to blame himself for the injuries to his arm and hand when the camel-cart dashed against rear side of the bus; that the accident was not caused for any negligence on the part of the driver and, therefore, the claim application has rightly been rejected by the learned Tribunal.

Having heard learned counsel for the parties and having perused the record and the impugned award, this Court is satisfied that the Tribunal has been in error in rejecting the claim application altogether and in not awarding just compensation to the appellant.

So far the cause of accident and resultant liability are concerned, indisputably the accident occurred for a camel-cart dashing against the rear left-hand side of the bus on the camel drawing the cart having been suddenly provoked by the passing bus. While driving a bus of the State Road Transport Corporation on Balotra to Jodhpur route, obviously frequented

by such camel pulled carts, the driver of the vehicle was definitely supposed to know that the animal was prone to provocation and ought to have been taken reasonable care by keeping reasonable control over speed and maintaining a safe margin while crossing a camel cart. Moreover, the accident having occurred during and by the use of the vehicle, the respondents could not have been exonerated altogether only on the assumption that there was no negligence in driving. Noteworthy it is that a claim for compensation under the Motor Vehicles Act is considered when the loss is caused by the use of a motor vehicle and even when driving is otherwise skillful, yet, if the driver of a public service vehicle omits to take further care that is required to be taken, particularly for ensuring safety of the passengers; or when the accident could have been avoided by taking further care, the tortious liability of the driver, and thereby of the owner of the vehicle cannot be ignored. The principles of strict liability, when applied to motor accident claim case, the other species of liability, i.e. negligence, ceases to be the prime basis of cause of action and, instead, the defendant is responsible even for accidental harm though not guilty of either wrongful intent or negligence, because he is under duty of ‘ensuring safety’. Viewed from any angle, the Tribunal was clearly in error in assuming that the non-applicants owe no liability for the incident by simply

observing that the accident was not caused by rash and negligent driving.

The learned Judge of the Tribunal has concluded on the basis of the statement of co-passenger AW-3 Shanker Lal that the appellant was holding a book in his right hand and his left hand was out of the window. The finding is not correct. Merely because the witness AW-3 Shanker Lal admitted that a book was lying near the claimant Yasin Khan, it cannot be assumed that the claimant was holding the book in his right hand and was reading the same. In any case, only for this fact that a book was lying nearby, it cannot be assumed even on extreme conjectures that the claimant's left arm was kept hanging out of the window. It has been suggested to the claimant in his cross-examination that the driver Guman Singh had warned him several times not to keep his arm out of the window whereas the driver Guman Singh, DW-1 has admitted in his cross-examination that he was not aware of the sitting status of the claimant Yasin Khan at the time of accident and it was the conductor who informed him that left arm was kept out of the window by Yasin Khan. The conductor Brij Lal, DW-3 has alleged that he had taken a seat after checking the tickets of the passengers and thereafter he as well as the driver and even the co-passengers asked the claimant Yasin Khan to keep his arm inside the bus but he did not care. In

such kind of uncertain evidence, the suggestion on the part of the non-applicants that the claimant intentionally kept his left arm out of the window cannot be accepted. The suggestion consistently made in the reply as well as in the cross-examination of the claimant and even in the evidence of non-applicants that the driver of the vehicle asked the claimant to keep his arm inside the bus cannot be accepted for the simple reason that the driver while concentrating on driving of a public service vehicle like the bus carrying passengers cannot be expected to keep eyes over the sitting status of every passenger of the vehicle; and in the present case, the claimant was sitting at the rear end of the vehicle on left hand side, and in the normal circumstances the driver having noticed his arm protruding out of window and having asked him to withdraw his arm inside the bus does not appear plausible a suggestion.

Moreover, in the accident the fingers and so also the entire left arm of claimant got crushed and it cannot be assumed that all the injuries were directly the result of the negligence of the claimant alone and nothing else. The condition of the bus as noticed in the mechanical inspection report shows that there were scratch marks on the body of the bus just above the rear left side wheel and a window panel was found broken. Obviously, the camel-cart hit at the rear

left-hand side of the bus at the very same window the claimant was sitting by. In such scenario, it were only the claimant who could have been injured; and the learned Judge of the Tribunal has been in absolute error in assuming total fault on the claimant only because no other person was injured. However, in view of the nature of injuries sustained by the claimant, on his left arm and hand only, the possibility of his having rested his arm, elbow or hand on the edge of the window cannot be ruled out. Had his arm being totally detached or withdrawn from the window, he would not have sustained crush injuries on the fingers because only window panel was broken and obviously the part of claimant's body that was in contact with the window got injured. Taking an over all view of the matter, this court is of opinion that in the present case, though contribution of the claimant to the injuries cannot be denied but he cannot be held responsible beyond 50% for the loss suffered and the non-applicants remain liable in compensation for at least 50% of the loss suffered by the claimant on account of the accident.

So far the injuries are concerned, it is amply established on record by the evidence of the Medical Jurist, AW-4 Dr. Dharmendra Sharma and so also by the X-ray reports that the appellant suffered crush wounds at the fingers of his left hand and so also a fracture at the left arm. It is

apparent from the discharge ticket Ex.44 that the claimant-appellant suffered bony injuries on the left arm and his middle, ring and little fingers of the left hand were required to be amputated.

The claimant was 27 years in age and alleged to be a 'thela' vendor. The learned Judge of the Tribunal has proceeded to question want of documentary proof in the form of municipal licence. Such an approach is fundamentally contrary to the requirements of awarding just compensation to the victim of motor accident. The claimant has stated his wage earnings at about Rs. 30/- per day and there appears no reason to disbelieve even that much of below minimum wage earning by the claimant. In view of disablement suffered; even if just 30% loss of earning capacity is considered, and a multiplier of 18 be applied, pecuniary loss of future income itself stands above Rs. 58 thousand. Further, in view of extensive injuries suffered by him on his left arm and the treatment undergone, this Court is clearly of opinion that the loss on all the heads including permanent disablement, medical expenditure, pains and sufferings and dietary expenditure could reasonably be estimated at a lump sum of Rs.2,00,000/-; and in view of the contribution to the injuries by the claimant even if 50% of the estimated loss be reduced, the claimant is clearly entitled for compensation in the sum of

Rs.1,00,000/-. Having regard to the overall circumstances, the claimant is also entitled to interest @ 7.5% from the date of filing of the claim application.

As a result of the discussion aforesaid, this appeal succeeds and is partly allowed; the impugned award dated 23.01.1992 is set aside and the claim application submitted by the claimant-appellant Yasin Khan is partly allowed and an award in the sum of Rs.1,00,000/- is made in his favour against the respondents; the appellant shall also be entitled to interest @ 7.5% from the date of filing of the claim application. The Rajasthan State Road Transport Corporation shall deposit the amount payable under the award within 30 days from today with the Tribunal. Upon deposit, 50% of the amount be paid cash to the claimant and the remaining be placed in a Monthly Income Scheme of the Post Office and the claimant shall be entitled to receive periodical interest thereupon. In the circumstances of the case, the parties shall bear their own costs.

(DINESH MAHESHWARI), J.

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